

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

C.R 240 of 2001.

Date of Decision: 18.6. 2007.

Baldev Singh and others

.....Petitioner.

Versus

Haram Lal

.....Respondent.

Coram

The Hon'ble Mr. Justice Dev Darshan Sud, J

Whether approved for reporting?¹

For the Petitioner: Mr. Neeraj, Gupta, Advocate.

For the Respondents: Mr. Ajay Kumar, Advocate.

Dev Darshan Sud, J.

This Revision Petition has been filed by the defendant against the order passed by the learned District Judge, dismissing the application under Section 5 of the Limitation Act praying for condonation of delay in filing the appeal preferred by the petitioner against the judgment and decree of the learned Trial Court.

The petitioner-defendants are aggrieved by the judgment passed by the learned District Judge as there was delay of 55 days in presenting the appeal. The learned District Judge, after framing an issue as to whether

¹ Whether Reporters of Local Papers may be allowed to see the judgment?

there was sufficient cause for condoning the delay, came to the conclusion that the delay had not been sufficiently explained and under these circumstances, dismissed the application. Admittedly, there was delay of 55 days in instituting the appeal. Illness of the parties has been one of the grounds. There can be no dispute with the proposition that the limitation does vest right in the party to the proceedings. Yet at the same time it cannot be ignored that no person would gain in filing an appeal which is barred by time. I find from the record that the learned Appellate Court had taken a hyper technical view of the matter and considered the entire case as if it was a criminal trial. The Appellate Court was well advised to have considered the fact that no party would gain by causing delay and defeating its own right and that consulting the lawyer, preparing the appeal and documents etc. does take time and it is not uncommon that such the delay is caused. The period of delay which was sought to be condoned was only 55 days. In these circumstances this petition is allowed and the delay is condoned subject to the petitioner paying a sum of Rs. 3000/- to the respondent as costs. The learned appellate Court will proceed with the appeal after as if it had been filed in time. Parties will appear before the learned District Judge Shimla on **30.7.2007**. Costs will be paid on that day itself, failing which, this Revision will be deemed to have been dismissed and the judgment of the learned Appellate Court would revive.

18th June, 2007.
(cm)

(Dev Darshan Sud),J